

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RYAN J. FISHMAN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 22-11058
)	
BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA,)	Judge Mark A. Goldsmith
)	
Defendant.)	

BERKSHIRE’S MOTION REQUESTING JUDICIAL NOTICE

Berkshire Life Insurance Company (“Berkshire”), by their attorneys, Chittenden, Murday & Novotny LLC, respectfully moves this Court, pursuant to Federal Rule of Evidence 201, to take judicial notice of the publicly available document (the MiCourt Case Details for Case No. 2022-0000019170-FH) submitted as Exhibit 1 to the accompanying Brief in support of this Motion, which is fully incorporated by reference herein and which sets forth in detail the legal basis for Berkshire’s Motion.

Pursuant to L.R.7.1 the undersigned counsel certifies that they sought concurrence to this Motion but, despite reasonable and timely efforts including sending an e-mail on June 4, 2024 seeking concurrence, the undersigned was not able to elicit any response or conference from Plaintiff’s Counsel.

WHEREFORE, Berkshire respectfully requests this Court enter an Order granting its Motion Requesting Judicial Notice.

Dated: June 5, 2024

Respectfully Submitted,
CHITTENDEN, MURDAY & NOVOTNY
LLC

/s/ Ryan H. Voss

One of its Attorneys

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STATEMENT OF ISSUES PRESENTED

1. Should the Court take judicial notice of the publicly available document submitted as Exhibit 1 herewith?

Answer: Yes.

STATEMENT OF CONTROLLING AUTHORITY

1. Fed. R. Evid. 201
2. *United States v. Ferguson*, 681 F.3d 826 (6th Cir. 2012).

I. BACKGROUND

Cross-motions for summary judgment are currently under advisement by the Court and have been fully briefed, including with supplemental briefing relating to the criminal prosecutions of Plaintiff, Ryan Fishman. (See e.g., ECF Nos. 88 and 89). At the time briefing was concluded, Plaintiff had promised to (but had not yet) plead guilty to felony charges in the 7th Circuit Court, Genesee County, Michigan. The publicly available Case Details of that prosecution now reflect Plaintiff pled guilty to two counts of felony forgery and one count of felony obstruction of justice on May 9, 2024.

II. ARGUMENT

Federal Rule of Evidence 201(b) allows this Court to take judicial notice of facts, including documents, that are not subject to reasonable dispute, in that they are capable of accurate determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). Federal Rule of Evidence 201(c) further provides that the Court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)(2).

“Judicial records are a source of ‘reasonably indisputable accuracy’ when they record some judicial action such as dismissing an action, granting a motion, or finding a fact. Courts can properly notice prior judicial acts for the purpose of acting upon them.” *United States v. Ferguson*, 681 F.3d 826, 834 (6th Cir. 2012) (citing

21B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 5106.4 (2d ed. 2005)). Guilty pleas are not subject to reasonable dispute and thus subject to proper judicial notice. *Id.*

Based on the above authorities, and the lack of any basis for Plaintiff's dispute of the fact of his guilty pleas, it is proper for the Court to take judicial notice in this matter of the same. Moreover, to the extent Berkshire relies on the MiCourt Case Report for the fact of Plaintiff's guilty plea but superior indicia of the guilty plea could be obtained from plea documentation itself, Berkshire made those requests in discovery and has updated those requests through briefing, but Plaintiff has consistently refused to produce any such documents. As such, Berkshire respectfully requests the Court take judicial notice of the guilty pleas entered by Plaintiff on May 9, 2024 for forgery (Exhibit 1, p. 16-17); and for obstruction of justice (Exhibit 1, p. 20).

III. CONCLUSION

WHEREFORE, Berkshire respectfully requests this Court enter an Order granting its Motion Requesting Judicial Notice, and taking Judicial Notice of the guilty pleas evidenced in Exhibit 1.

Dated: June 5, 2024

Respectfully Submitted,

CHITTENDEN, MURDAY & NOVOTNY LLC

/s/ Ryan H. Voss

One of its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on this **5th** day of **June, 2024**, I electronically filed the foregoing **Motion for Requesting Judicial Notice** with the Clerk of the U.S. District Court, Eastern District of Michigan, Southern Division, using the CM/ECF system which will send notification of such filing to the following attorneys:

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